

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Mark Dinsmore

Serial No.: 10/790,636 (which is a reissue application of 6,493,419 issued December 10, 2002)

Filed: March 01, 2004

Title: Optically Driven Therapeutic Radiation Source  
Having Spiral Shaped Thermionic Cathode

Attorney Ref.: 56249-173 (PHLL-157RE)

**CERTIFICATE OF MAILING (37 C.F.R. § 1.8(a))**

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail under 37 CFR 1.8(a) in an envelope addressed to Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

Date: 11/4/04

*Elsie M. Saraglow*  
Elsie M. Saraglow

Mail Stop Missing Parts  
Assistant Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PETITION UNDER 37 CFR § 1.47(b)**

Sir:

In response to the Notice To File Missing Parts of July 4, 2004, petition is hereby made to accept the Declaration and Power of Attorney, which is enclosed herewith and is signed by Mark G. Lappin on behalf of and as an agent of the sole inventor of the above-identified reissue application, pursuant to the provisions of 37 C.F.R. § 1.47(b).

The Notice To File Missing Parts of has a two (2) month shortened statutory period for response expiring September 4, 2004, and a Petition for an Extension of Time to respond to the Notice to File Missing Parts is being filed concurrently herewith.

11/09/2004 HAL111 10790636  
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**A. SOLE INVENTOR**

Mark Dinsmore is the sole inventor of the above-identified reissue application ("Reissue Application"). At the time Mark Dinsmore invented the subject matter of the Reissue Application ("Invention"), he was an employee of Photoelectron Corporation ("Photoelectron").

**B. APPLICANT MAKES OATH**

In accordance with M.P.E.P. §409.03(b), the undersigned, Mark G. Lappin, hereby makes application for the Invention on behalf of and as agent for an inventor who refuses to sign the Declaration and Power of Attorney for the Reissue Application ("Application Papers"). Mark G. Lappin hereby states that he is authorized to sign on behalf of Carl Zeiss AG, the current assignee of the Reissue Application, in this matter for this purpose.

**C. APPLICANT'S RELATIONSHIP TO INVENTOR**

In accordance with M.P.E.P. § 409.03(b), applicant Mark G. Lappin is a registered patent attorney (Registration No. 26,618) in the Intellectual Property Department of McDermott Will & Emery LLP, acting on behalf of Carl Zeiss AG, who acquired the Reissue Application from Photoelectron. Photoelectron is the original assignee of Mark Dinsmore's interest in the Reissue Application.

**D. INVENTOR REFUSED TO SIGN THE APPLICATION PAPERS**

In accordance with M.P.E.P. §409.03(d), 1) Mark Dinsmore refused to sign the Application Papers, despite having been asked to do so; and 2) Mark Dinsmore gave a

reason for refusing to sign the Application Papers, namely that he was concerned that signing the Application Papers might limit his future business activities.

**E. PROOF OF REFUSAL TO EXECUTE THE APPLICATION PAPERS**

In accordance with M.P.E.P. §409.03(d), Mark G. Lappin submits herewith a "Declaration in Support of a Petition Under 37 C.F.R. § 1.47(b)," which fully describes the facts that are relied upon to establish that Mark Dinsmore refused to sign the Application Papers.

**F. LAST KNOWN ADDRESS**

In accordance with M.P.E.P. §409.03(e), the last known address of Mark Dinsmore is: 25 Wadsworth Road, Sudbury, MA 01776.

**G. THE INVENTOR HAS ASSIGNED THE INVENTION TO CARL ZEISS AG**

In accordance with M.P.E.P. §409.03(f), the inventor Mark Dinsmore assigned the Reissue Application to Photoelectron, which in turn assigned the Reissue Application to Carl Zeiss AG. A copy of the relevant assignment documents ("Assignment Documents") are attached to this petition. The Assignment Documents establish a *prima facie* case that Carl Zeiss AG has a proprietary interest in the subject matter of the Reissue Application.

**H. FILING OF THE APPLICATION IS NECESSARY TO PRESERVE THE RIGHTS OF CARL ZEISS AG**

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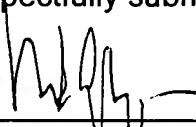
In accordance with M.P.E.P. §409.03(g), the refusal by Mark Dinsmore to sign the Application Papers fails to preserve Carl Zeiss AG's rights granted under the

Assignment Documents, and will result in irreparable damage by causing the abandonment of the Reissue Application for failure to comply with the statutory requirements of 37 C.F.R. §1.497. The filing of the Reissue Application is necessary to preserve the rights of Carl Zeiss AG.

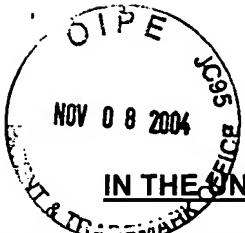
I. **PETITION FEE**

The Commissioner is hereby authorized to charge the petition fee in accordance with 37 C.F.R. 1.117(i), as well as the petition fee for an extension of time under 37 C.F.R. § 1.136, to Deposit Account 50-1133. The Commissioner is hereby authorized to charge any additional fees that may be due, or credit any overpayment of same, to Deposit Account No. 50-1133.

Respectfully submitted,

  
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Mark G. Lappin  
Registration Number 26,618  
McDERMOTT WILL & EMERY LLP  
28 State Street  
Boston, Massachusetts 02109  
Tel. (617) 535-4043  
Fax: (617) 535-3800

Date: November 4, 2004



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Mark Dinsmore

Serial No.: 10/790,636 (which is a reissue application of 6,493,419 issued December 10, 2002)

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Attorney Ref.: 56249-173 (PHLL-157RE)

Mail Stop Missing Parts  
Assistant Commissioner for Patents  
P.O. Box 1450  
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Date: 11/4/04

Elsie M. Saraglow  
Elsie M. Saraglow

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**DECLARATION OF MARK G. LAPPIN FILED  
IN SUPPORT OF PETITION UNDER 37 C.F.R. § 1.47(b)**

I, Mark G. Lappin, to the best of my knowledge and belief, do hereby state as follows:

1. I am a registered patent attorney (Registration No. 26,618) in the Intellectual Property Department of McDermott Will & Emery LLP, acting on behalf of Carl Zeiss AG, who is the current assignee of the above-referenced reissue application ("Reissue Application").
2. Mark Dinsmore is the sole inventor of the Reissue Application.
3. Mark Dinsmore is the sole inventor of U.S. Patent No. 6,493,419B2 ("Underlying Patent"), upon which the Reissue Application is based.
4. I filed and prosecuted the application that issued in due course as the Underlying Patent ("Underlying Application").
6. Because Mark Dinsmore is the sole inventor of the Underlying Patent, has reviewed the contents of the Underlying Application, and has signed the application papers for

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In re Application of: Mark Dinsmore

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6,493,419, issued December 10, 2002)

Filed: March 1, 2004

Title: Optically Driven Therapeutic Radiation Source Having Spiral Shaped  
Thermionic Cathode

Docket: PHLL-157RE (56249-173)

**CERTIFICATE OF MAIL**

I certify that this document is being deposited on the date stated below, with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8(a) and is addressed to Mail Stop: Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

11/4/04  
DateElsie M. Saraglow  
Elsie M. Saraglow

**Mail Stop: Missing Parts**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**TRANSMITTAL LETTER**

- 1) Response to Notice to File Missing Parts;
- 2) Petition Under 37 CFR § 1.47(b);
- 3) Declaration of Mark G. Lappin Filed in Support of Petition Under 37 CFR § 1.47(b);
- 4) Assent of Assignee to Reissue;
- 5) Statement Under 37 CFR § 3.73(b);
- 6) Statement Explaining Change in Name of Assignee;
- 7) Petition for A Four-Month Extension of Time;
- 8) Combined Declaration and Power of Attorney in Reissue Application;
- 9) Assignment Documents;
- 10) Copy of Notice to File Missing Parts of Reissue Application; and
- 11) Acknowledgment Postcard.

U.S.S.N.: 10/790,636

The Commissioner is hereby authorized to charge the requisite declaration surcharge of \$130.00 and the Four-month Extension of Time to File fee of \$1,530.00, as well as any additional fees which may be required, or credit any overpayment to Deposit Account No. 50-1133.

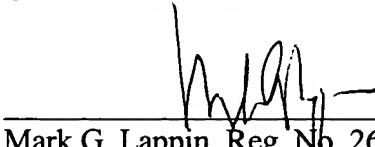


Date: November 4, 2004

Respectfully submitted,

McDERMOTT, WILL & EMERY

Customer No. 23630

  
Mark G. Lappin, Reg. No. 26,618  
28 State Street  
Boston, MA 02109-1775  
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Page- 2 -

the Underlying Application, Mark Dinsmore is thoroughly familiar with the subject matter disclosed in the Reissue Application.

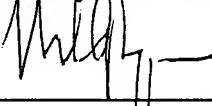
7. On or about November 3, 2004, I spoke with Mark Dinsmore, explaining to him the proposed changes to the claims of the Reissue Application, as compared to the claims of the Underlying Patent.

8. The Reissue Application was offered to Mark Dinsmore, and Mark Dinsmore's signature of the Declaration and Power of Attorney for the Reissue Application ("Application Papers") was solicited.

Mark Dinsmore expressly stated that he would not sign the Application Papers. Mark Dinsmore's express oral statement occurred on November 3, 2004, in Massachusetts.

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of any application or patent issued thereon.

Respectfully submitted,

  
\_\_\_\_\_  
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Registration Number 26,618  
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Boston, Massachusetts 02109  
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